REMARKS

Claims 1-19 are presented for examination. Claims 7-13 and 19 are found allowable subject to being rewritten in independent form.

Claims 1-6 and 14-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Gridley in view of Murthy.

This rejection is respectfully transferred for the following reasons. In the application of a rejection under 35 U.S.C. § 103, it is incumbent upon the Examiner to factually support a conclusion of obviousness. As stated in *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966), obviousness under 35 U.S.C. § 103 must be determined by considering (1) the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; and (3) resolving the level of ordinary skill in the pertinent art.

Independent claim 1 recites a multiport data communication system for transferring data packets between ports. The data communication system comprises a plurality of ports for receiving and transmitting the data packets, and a decision making engine responsive to received data packets for directing the received data packets to the ports selected for transmission of the received data packets.

The decision making engine includes:

- a plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports,

- logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information,

- a forwarding circuit responsive to the logic circuitry for identifying at least one transmit

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port , and

- a traffic capture mechanism for enabling one port of said plurality of ports to output data transferred via multiple other selected ports of said plurality of ports.

Independent claim 14 recites that in a communication network having a plurality of ports and a decision making engine for controlling data forwarding between the ports, a method of monitoring network activity comprises the steps of:

- placing data blocks representing received data packets in a plurality of data queues to be processed by the decision making engine,

- processing the data queues by logic circuitry in accordance with a prescribed algorithm to determine destination information,

- identifying at least one port for transmitting data packets based on the destination information,

- selecting multiple sniffed ports among the plurality of ports for monitoring the data packets transferred via the sniffed ports, and

- selecting a sniffer port among the plurality of ports to provide output of the data packets transferred via the sniffed ports.

The Examiner holds Gridley to differ from the claimed subject matter only in that the reference does not disclose the claimed traffic capture mechanism. Murthy et al. is relied upon for disclosing this element.

Considering the references, Gridley discloses a distributed processing system with multiprocessing configuration. The Examiner considers:

- the packet RAM 135 of Gridley to correspond to the plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets

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received by the corresponding ports; and

- the address processor 220 to correspond to the logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information.

Gridley discloses that the packet RAM 135 serves as a packet buffer which stores the packets received through ports P1-P8 of the respective LAN while the packet processor sends the packet header of the packet stored in the packet RAM 135 to the system card (col. 3, lines 51-60).

As submitted in the previous response, the packet RAM 135 does not serve as the plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports of the plurality of ports for receiving and transmitting the data packets.

The Examiner takes the position that since the packet RAM 135 is a shared packet buffer, "it is reasonable to consider the packet buffer or packet RAM 135 as plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports."

This position is respectfully traversed. As one skilled in the art of data communications would understand, a shared buffer does not need to contain separate buffer portions of memory for each port, as the Examiner asserts. A common buffer memory may be used for buffering data received from all of the ports.

Moreover, Gridley discloses that packets received from the ports 1-8 are accumulated in the RAM 135. The address processor 220 is used for forwarding packets based on their headers. Accordingly, one skilled in the art would understand that Gridley does not need separate

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buffering for each port.

As the Examiner relied upon inherency without expressly indicating such reliance, the Examiner should be aware that inherency requires certainty, not speculation. *In re Rijckaert*, 9 F.3rd 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); *In re Oelrich*, 666 F.2d 578, 212 USPQ 323 (CCPA 1981); *In re Wilding*, 535 F.2d 631, 190 USPQ 59 (CCPA 1976). To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probability or possibilities. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

As demonstrated above, separate buffering for each port is not necessarily present in the Gridley system. Accordingly, the Examiner's position is improper.

Moreover, as submitted in the previous response, the address processor 220 of Gridley is responsive to packet source and destination information from multiple LANs to update and access the address RAM 225 which contains an address look-up table (col. 4, lines 3-6). Accordingly, the address processor 220 is not responsive to the plurality of queuing devices for processing the data blocks placed in data queues in accordance with a prescribed algorithm to determine destination information, as claims 1 and 14 require.

In response, the Examiner asserts that "if the switch does not receive any data packets, store the data packets, then the functions such as forwarding decisions should not be happened at all."

It is respectfully submitted that the Examiner has failed to ascertain the differences

between the prior art and the claims in issue, *Graham v. John Deere Co., supra*. Claim 1 requires the logic circuitry **to be responsive to the plurality of queuing devices for processing the data blocks** in accordance with a prescribed algorithm to determine destination information. Claim 14 requires **the plurality of data queues** to be processed by the logic circuitry.

As the Examiner appears to understand, Gridley does not disclose these features.

Hence, Gridley does not disclose:

- a plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports, and

- logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information, as claim 1 recites; and

- placing data blocks representing received data packets in a plurality of data queues to be processed by the decision making engine, and

- processing the data queues by logic circuitry in accordance with a prescribed algorithm to determine destination information, as claim 14 recites.

As the Examiner admits, Murthy also does not disclose these features.

In the absence of a teaching or suggestion in the references of the details recited in claims 11 and 14, it is submitted that a conclusion of obviousness is not warranted.

Further, the Examiner must provide a reason why one having ordinary skill in the art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985). *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *In re*

Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967).

The Examiner should recognize that the fact that the prior art *could* be modified so as to result in the combination defined by the claims would not have made the modification obvious unless the prior art suggests the desirability of the modification. *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). In the absence of such a prior art suggestion for modification of the references, the basis of the rejection is no more than inappropriate hindsight reconstruction using appellant's claims as a guide. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967).

As demonstrated below, the Examiner has improperly applied hindsight as a basis for a holding of obviousness.

The Examiner takes the position that since Gridley discloses a controller for monitoring the operation of each one of LAN cards, but does not disclose a traffic capture mechanism for enabling one port to output data transferred via multiple other selected ports, it would have been obvious to include this feature "**to monitor data packets and collect related information for network analysis.**"

This position is respectfully traversed. Gridley discloses that each LAN card 100 have eight ports P1-P8. Therefore, one skilled in the art would understand that monitoring operation of each one of LAN cards 100 does not involve enabling one port of a plurality of the ports to output data transferred via multiple other selected ports of this plurality of the ports.

Moreover, one skilled in the art would understand that the traffic capture mechanism for enabling one port of the plurality of ports to output data transferred via multiple other selected ports of the plurality of ports is not required "to monitor data packets and collect related information for network analysis."

Accordingly, one having ordinary skill in the art would have no reason to include in the

Gridley arrangement a traffic capture mechanism for enabling one port of the plurality of ports to output data transferred via multiple other selected ports of the plurality of ports. It is not apparent why one skilled in the art would have recognized any advantage to be gained by the proposed combination of references.

Hence, the Examiner has failed to provide the requisite reasons for modifying Gridley and thus to establish a *prima facie* case of obviousness.

Therefore, Applicants respectfully submit that the rejection of claims 1-6 and 14-18 under 35 U.S.C. § 103 is improper and should be withdrawn.

In view of the foregoing, and in summary, claims 1-19 are considered to be in condition for allowance. Favorable reconsideration of this application is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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